

Safety laws need careful consideration

Master Builders has a deep and long-standing commitment to safety. We understand what works and what doesn't in the construction sector because we have been at forefront of improving safety standards, awareness and training for decades.

With that knowledge and involvement in workplace safety, Master Builders is extremely concerned about the proposed new industrial manslaughter offences in the Work Health and Safety Bill 2019.

Master Builders unequivocally agrees that no deaths should occur in the workplace. However, we strongly disagree with the idea that the proposed industrial manslaughter laws will achieve that aim.

Firstly, under our current law, negligence contributing to injury or death on a worksite is already covered by the justice system. Both employers and employees can be prosecuted for manslaughter following workplace fatalities under the state Criminal Code and Occupational Safety and Health Act 1984. An additional offence of industrial manslaughter is a duplication of existing law.

The Criminal Code is where manslaughter offences sit, and employers have been prosecuted following workplace deaths under the equivalent laws in Queensland and South Australia. New South Wales recently rejected the introduction of industrial manslaughter on the basis that criminal laws already cover workplace deaths. The WA bill itself acknowledges the existence of an offence to cover industrial manslaughter under our Criminal Code.

The WA laws were updated in October 2018, to increase penalties on workplace deaths from two to five years imprisonment and fines up to \$3.5 million – higher than national model laws. The current laws also allow for proactive enforcement, so both monetary penalties and jail time can be applied before a fatality or serious injury occurs.

The recently amended laws make it difficult to see the need for a new offence of industrial manslaughter.

Secondly, industrial manslaughter laws will not improve safety outcomes. They haven't elsewhere.

If industrial manslaughter was an effective deterrent, we would expect serious injury rates to drop following its introduction. Similar laws have been in place in the UK for 15 years and the ACT for 11 years. Despite introducing industrial manslaughter in 2004, the ACT's serious injury claim rates are higher than the national average and higher than WA. Claim rates were consistently above average for the four years from 2012/13 to 2016/17 and, over the longer term, have declined only in line with the national average or plateaued.

Industrial manslaughter has been in place in the UK since 2008 and a significant number of prosecutions have been brought, but fatality rates have remained relatively flat. The largest reduction in fatalities occurred prior to the law taking effect.

There is no evidence that additional offences will save lives in workplaces. Neither the Federal Government's review into workplace health and safety laws (not applicable in WA), nor the State Government's own inquiry identified any evidence of the success of industrial manslaughter laws. The State Government's inquiry did not recommend industrial manslaughter at all.

Thirdly, and of most concern, is the proposed laws do not seek to improve safety. Focusing on punitive measures after a fatality misses an opportunity for proactive, practical measures which have been proven to prevent deaths.

Safety is the shared responsibility of employers and employees alike. The proposed laws will create a 'blame' culture, where employers and workers focus on defending themselves rather than working together to stay safe.

Safety experts consider the reactive approach of the laws will worsen safety outcomes. A cooperative approach which allows risks to be identified and fixed before catastrophic injury occurs has seen a 62 per cent decline in workplace fatalities across Australia in the past decade.

Industrial manslaughter is not focused on risk – it breaks the chain of safety culture, with employees specifically excluded from liability under the proposed laws.

Finally, Master Builders is disappointed by the lack of consultation on the introduction of industrial manslaughter in WA. Without meaningful engagement with experts in the field, the Government simply cannot be aware of what is effective in improving safety and is imposing an ill-conceived approach.

Master Builders advocates for safety to be put first. The focus should be proactively preventing workplace deaths through providing resources, education, advice, technical expertise and support to implement and maintain safe work practices.

On previous occasions the McGowan Government has consulted extensively with industry. We look forward to discussing these matters with the Government to achieve effective safety laws for Western Australia.